SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 209

MAGNOLIA PETROLEUM COMPANY,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

RAYMOND M. MYERS,
HOMER HENDRICKS,
Counsel for Petitioner.

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MAGNOLIA PETROLEUM COMPANY,
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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

Your petitioner, MAGNOLIA PETROLEUM COMPANY, a Texas corporation, respectfully prays that a writ of certiorari issue to review a judgment (judgment dismissing petitioner's petition entered January 3, 1944, R. 35; order overruling petitioner's motion for new trial entered April 3, 1944, R. 36) of the Court of Claims of the United States entered in a suit there entitled "Magnolia Petroleum Company v. United States of America," number 45678, and in support of its petition shows:

I. Short Statement of the Matter Involved.

Magnolia Petroleum Company, a Texas corporation, petitioner, sued the United States of America in the Court

of Claims of the United States for the recovery of One Hundred Fourteen Thousand Six Hundred and Ninety-five Dollars ($114,695.00), with interest, which is the sum assessed against petitioner and paid by it as a tax on the transportation of oil and its products by pipe line under Sec. 731 of the Revenue Act of 1932, as amended by Sec. 212, National Industrial Recovery Act, and Public Resolution No. 36, 74th Congress, approved June 28, 1935 (R. 1-11).

Said Sec. 731, which was in effect during the period here involved, reads in part as follows:

> Sec. 731. *Tax on Transportation of Oil by Pipe Line.*
>
> (a) There is hereby imposed upon all transportation of crude petroleum and liquid products thereof by pipe line * * *
>
> (1) A tax equivalent to 4 per centum of the amount paid on or after the fifteenth day after the date of the enactment of this Act for such transportation, to be paid by the person furnishing such transportation.
>
> (2) In case no charge for transportation is made, either by reason of ownership of the commodity transported or for any other reason, a tax equivalent to 4 per centum of the fair charge for such transportation to be paid by the person furnishing such transportation.
>
> (3) If (other than in the case of an arm's length transaction) the payment for transportation is less than the fair charge therefor, a tax equivalent to 4 per centum of such fair charge, to be paid by the person furnishing such transportation.
>
> (b) For the purposes of this section, the fair charge for transportation shall be computed—
>
> (1) from actual bona fide rates or tariffs, or
>
> (2) if no such rates or tariffs exist, then on the basis of the actual bona fide rates or tariffs of other

pipe lines for like services, as determined by the Commissioner, or

(3) if no such rates or tariffs exist, then on the basis of a reasonable charge for such transportation, as determined by the Commissioner.

That portion of Regulations 42 (Revised October, 1932), promulgated by the Treasury Department on this subject, is set out in the Appendix (pp. 9-11, *infra*).

Magnolia Petroleum Company has its principal office and place of business at Dallas, Texas (R. 41). During all of the time in question, it was engaged in the business of producing, refining and marketing petroleum and petroleum products, and among other properties had a refinery at Beaumont, Texas, with an adjunct thereof at Magpetco, Texas, and an oil and gas lease at Cameron Meadows, located in southern Louisiana (R. 51). Activities at these points are involved in this case. The Cameron Meadows lease is located in southern Louisiana in swampy country and it is necessary to move the oil produced therefrom by barge. The oil as it was produced on the lease was not ready for market and had to be placed in settling tanks where it was treated. From settling tanks the oil was moved to stock tanks from which it was loaded on barges (R. 51-52). Petitioner was not a common carrier and had no pipe line (R. 62-63, 65, 66).

The distribution and amounts (R. 42-43) of the pipe line transportation taxes assessed against petitioner are as follows:

Federal pipe line transportation taxes were assessed against the petitioner on the conveyance or transportation of its own oil (both crude and refined) from its own tanks on its own premises, through its own lines of pipes, into vessels on the river adjoining *a* and *b* below, and into barges on the canals within *c* below, and in sums, as follows:

a. *Beaumont Refinery in Texas*—	
(1) Taxes and interest paid on the conveyance of refined products into vessels	$74,883.50
(2) Taxes and interest on the conveyance of crude oil into vessels	10,793.10
b. *Magpetco Terminal in Texas*—	
(3) Taxes and interest on the conveyance of refined products from the Beaumont refinery to the Magpetco terminal, (a distance of 9 miles) and loading the same into vessels	9,531.74
(4) Taxes and interest on the conveyance of crude oil into vessels	17,456.03
c. *Cameron Meadows Lease in Louisiana*—	
(5) Taxes and interest on the conveyance of crude oil into barges	2,030.63
Total	$114,695.00

The above-mentioned taxes were assessed for the period January 1, 1933 to April 30, 1937 and were paid (R. 2) as follows:

September 16, 1936	$938.72
March 5, 1938	76,600.81
March 18, 1938	36,594.10
August 5, 1938	561.37
Total	$114,695.00

Petitioner filed, on November 1, 1939, its claim for refund in the amount of $114,695.00 with the Collector of Internal Revenue at Dallas, Texas (Petitioner's "Exhibit A", R. 1, 12A).

The Commissioner of Internal Revenue, in passing on the claim for refund above mentioned, held that the loading of refined products at the Beaumont refinery was *not taxable*, on the ground that no substantial pipe line movement was involved (R. 22). The claim for refund was denied in all other respects, including the gathering and

loading of crude petroleum on the Cameron Meadows lease (R. 22). The Commissioner set out that the latter assessment included the movement from the well to the centralized battery of tanks for treating and the movement from such tanks and the loading of the product into barges (R. 24).

On review, the Chief Counsel of the Bureau of Internal Revenue held that the refund of the taxes assessed against the loading of refined products at Beaumont refinery was not warranted, and the Commissioner thereupon rejected the claim of petitioner in full (R. 26).

The above-mentioned suit in the Court of Claims of the United States followed.

In the trial of the case it was the position of the United States that the activities outlined above constituted taxable "transportation" of oil and its liquid products by pipe line within the purview of Sec. 731 of the Revenue Act of 1932, as amended. Petitioner contended that none of the movements there involved constituted such taxable transportation by pipe line. The judgment of the court was in favor of the United States (R. 35). Thereafter, petitioner filed its Motion for New Trial and for Amendment of Findings. Petitioner's said motion, as stated, was overruled by the court (R. 36).

II. Jurisdiction.

This court has jurisdiction to review the decision of the Court of Claims under the authority of c. 229, Sec. 3, 43 Stat. 939, February 13, 1925, as amended May 22, 1939; c. 140, 53 Stat. 752 (Tit. 28, Sec. 288, U. S. C. A.).

The applicable portion thereof is quoted from Sec. 288(b) as follows:

> "In any case in the Court of Claims, including those begun under section 287 of this title, it shall be competent for the Supreme Court, upon the petition of

> either party, whether government or claimant, to require by certiorari that the cause be certified to it for review and determination of all errors assigned, with the same power and authority and with like effect as if the cause had been brought there by appeal."

Also the decision in this case is in conflict as to the Cameron Meadows movement with the case of *Jones* v. *Continental Oil Company*, 141 F. (2d) 923, decided on March 21, 1944, by the United States Circuit Court of Appeals, Tenth Circuit. This case holds that the movement of oil under its original well pressure from the wells through the treating equipment into the storage tanks located in the trunk pipe line is part of the production process and not a taxable gathering movement.

III. Opinion Below.

The opinion of the Court of Claims (R. 28-35) is reported in 53 F. Supp. 231.

IV. Questions Presented.

The ultimate question here presented is whether (a) the loading of refined products at the Beaumont refinery and (b) the gathering and loading of oil at Cameron Meadows is taxable transportation within the purview of Sec. 731 of the Revenue Act of 1932, as amended.

Alternatively, there is a question whether, even if the said movements are held taxable, the rates fixed by the Commissioner of Internal Revenue and used as a basis for the tax were reasonable, as specified by Sec. 731(b)(3).

The questions of fact and of law which are the bases of the errors discussed in detail in the supporting brief may be enumerated as follows:

1. The court below made findings of fact without substantial evidence to sustain them. (See Errors of Fact Nos. 2 and 3 in supporting brief.)

2. The court below erred in failing to make other findings of fact, requested by petitioner, on material issues. (See Errors of Fact Nos. 1, 4, 5, 6, 7, 8, 9 and 10, in supporting brief.)

3. The court erroneously found, as a matter of law, that the petitioner was not entitled to recover the taxes paid on loadings of refined products at its Beaumont refinery, and erroneously held that the same constituted transportation of oil by pipe line. In so doing, it misinterpreted and misapplied the provisions of Art. 26 of Treasury Regulations 42.

4. The court erroneously found, as a matter of law, that the petitioner was not entitled to recover the taxes paid on loadings of oil at Cameron Meadows, and erroneously held that the same constituted taxable transportation of oil by pipe line. In so doing it misinterpreted and misapplied the provisions of Art. 26 of Treasury Regulations 42.

5. The court erroneously found, as a matter of law, that the Commissioner, under Sec. 731(b) of the Revenue Act of 1932, was not authorized in this case to determine what would be a reasonable charge upon which to assess the tax.

6. The court erroneously decided, as a matter of law, that the petitioner was not entitled to recover.

V. Reasons Relied On for Allowance of Writ.

The decision below should be reviewed by this court because it is clearly erroneous. The errors committed by the

Court of Claims which are mentioned above are discussed in detail in our supporting brief.

It is of particular importance that this court review the failure of the Court of Claims to follow the clear language of Art. 26 of Reg. 42 applicable to this case. This regulation of the Commissioner was established and was of long standing and had attained the force and effect of law. The Court of Claims ignored this regulation.

VI. Conclusion.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the said judgment and order of the Court of Claims of the United States should be granted.

RAYMOND M. MYERS,
Magnolia Building,
Dallas 1, Texas;
HOMER HENDRICKS,
920 Southern Building,
Washington 5, D. C.,
Attorneys for Magnolia Petroleum Company, Petitioner.

APPENDIX.

Excerpts from Regulations 42.

(Revised October, 1932.)

Art. 26. *Basis of tax.*—The term "all transportation of crude petroleum and liquid products thereof by pipe line" includes any such transportation by a carrier, either public or private, whether or not transported for hire, and whether or not the commodity transported is owned by the carrier. It also includes the transportation by private owner whenever the movement is substantially similar to movements which pipe line carriers usually undertake and perform, if the movement is not merely local or incidental to another business or a related business engaged in by the person so transporting, such as the producing or refining of oil. Thus, where a refiner maintains a trunk line or a gathering line from a refinery to an oil field or pool, the services which the refiner performs for himself are similar to those which pipe line carriers would otherwise render. The refiner, therefore, should pay the tax as though he had in fact employed the services of a carrier. If, on the other hand, the movement is from storage tanks to stills which are a part of the same manufacturing unit, or from wells to flow tanks or storage tanks situated in the immediate vicinity, the movement is not such as a pipe line carrier would normally render and consequently is not subject to the tax imposed under Section 731. The movement by pipe line from lease storage tanks to storage tanks such as are usually maintained in the immediate vicinity of a refinery, railroad siding, or boat wharf, is taxable.

The gathering service rendered in movements from lease storage tanks to storage tanks or receiving stations at the end of a stem or gathering line is subject to tax.

The transportation service rendered in movements from the end of the stem or gathering lines through a main or trunk line to a point of delivery is subject to tax.

Delivery service such as loading into tank cars or tank vessels by means of loading racks is subject to tax when rendered as a continuation or part of a prior taxable service.

Art. 27. *Rate and computation of tax.*—Where a "fair charge" for the transportation is collected, the tax attaches at the rate of 4 per cent of such charge. In case no charge for the transportation is made by reason of the ownership of the commodity transported or otherwise, or if in a transaction not at arm's length a charge less than a fair charge is made for the services rendered, the tax will attach at the rate of 4 per cent of a fair charge for such services, as determined by the Commissioner.

Fair Charge.

Section 731(b) of the Revenue Act of 1932

(b) For the purposes of this section, the fair charge for transportation shall be computed—

(1) from actual bona fide rates or tariffs, or

(2) if no such rates or tariffs exist, then on the basis of the actual bona fide rates or tariffs of other pipe lines for like services, as determined by the Commissioner, or

(3) if no such rates or tariffs exist, then on the basis of a reasonable charge for such transportation, as determined by the Commissioner.

Art. 28. *Fair charge.*—If a pipe line carrier having published tariffs and engaged in the bona fide transportation of crude petroleum and liquid products thereof for hire makes no charge or (in the case of a transaction not at arm's length) less than a fair charge for moving such commodities accepted by it for transportation, the tax is to be computed upon a fair charge which would be paid under the carrier's tariffs for performing such service for hire.

Where no tariffs have been published, the fair charge will be determined on the basis of the ordinary or customary charge for like or similar services performed in the same field or area. If no reasonable basis of comparison can be found, a full statement of the facts surrounding the particular movement must be submitted to the Commissioner for his guidance and assistance in determining a fair charge. Such a statement should contain figures show-

ing the original investment in the pipe line system, additions and betterments, depreciation, obsolescence, sinking funds and reserves, present worth, operating expenses during the taxable period, fair income return, and other information which may be of value, including an estimate as to the probable life of the field and of the pipe line.

From information available the Commissioner will determine what constitutes a fair charge for the purpose of this tax in respect of the particular movement under consideration.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 209

MAGNOLIA PETROLEUM COMPANY,
Petitioner,

vs.

THE UNITED STATES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

I. Opinion Below.

The petition seeks a writ directed to the Court of Claims of the United States, to review a judgment rendered by it in the suit there entitled "Magnolia Petroleum Company v. The United States of America", reported in 53 F. Supp. 231 (R. 28-35).

II. Jurisdiction.

The grounds upon which the jurisdiction of this court is invoked have been set forth in the petition. Briefly stated, jurisdiction is based upon c. 229, sec. 3, 43 Stat. 939, February 13, 1925, as amended May 22, 1939; c. 140, 53 Stat. 752 (Tit. 28, Sec. 288). Also there is a conflict between the

decision of the court below and the case of *Jones* v. *Continental Oil Company*, 141 F. (2d) 923, decided by the United States Circuit Court of Appeals, Tenth Circuit, on March 21, 1944.

III. Statement of Case.

The facts have been stated in the petition. Additional facts will be set out in the detailed discussion of each error of fact and of law as they are hereinafter discussed.

In its Motion for New Trial and for Amendment of Findings (R. 36) petitioner set out separately errors of fact and of law. The court overruled said motion (R. 36). These errors are hereinafter discussed.

IV. Argument.

In summary, the petitioner's position is that the holding of the court below that (a) the loading of refined products at the Beaumont refinery and (b) the loading of crude petroleum on barges at the Cameron Meadows lease constituted "transportation * * * by pipe line" within the taxing statute is without support, first, because the court failed to consider the undisputed facts of the record and made findings which cannot be supported by the record, and, second, because the court misinterpreted and misapplied the provisions of Art. 26 of Treas. Reg. 42. Also, the petitioner contends that the court erred in failing to hold that, even if the movements were otherwise taxable, the Commissioner, under Sec. 731(b) of the Revenue Act of 1932, was authorized in this case to determine what would be a reasonable charge upon which to assess the tax.

(1) Errors of Fact.

The errors of fact relied upon are set forth immediately hereinafter as Nos. 1 to 10, inc. and are discussed in detail. In its Motion for New Trial and for Amendment of

Findings (R. 36), petitioner specifically requested the court to correct said errors and amend its findings.

ERROR OF FACT NO. 1.

In its Special Finding 12, the court below found the following as a fact:

> "Other pipe line companies operating in the Beaumont and Magpetco area made a charge for loading of from 1½ to 2½ cents per barrel." (R. 32)

The foregoing would be a correct statement only in the event the following fact were included, and this the court erroneously omitted to do.

> "However, all such charges for loading were made only when the loading service was rendered as a *continuation or part of a prior taxable service.*"

The evidence in the record on which the correct findings are to be based, consists of nine tariffs (See Stipulation of Parties, Exhibits A to I, inc., R. 120) of pipe line companies filed with the Interstate Commerce Commission, as follows:

Atlantic Pipe Line Company, I. C. C. No. 13, issued May 31, 1934, effective July 1, 1934. This is a local pipe line tariff applying on crude petroleum from points in Texas and New Mexico to Atreco, Harbor Island, and Oak Point, Texas. The basic rates shown on the tariff (R. 120B) are for a taxable service; no rates whatever are quoted for loading except when made in connection with a prior taxable service; in the named circumstances and only then, as shown by General Rule No. 1 (R. 121) of the tariff, "an additional charge of 1½ cents per barrel will be made."

Gulf Pipe Line Company, I. C. C. No. 10, issued August 17, 1934, effective September 17, 1934, and Gulf Refining

Company Supplement No. 1 thereto. This is a joint pipe line tariff quoting a rate of 32½ cents per barrel for the transportation of crude petroleum from stations in Kansas and Oklahoma to Port Arthur, Texas. The tariff states (R. 124A) that "all deliveries to vessels will be subject to an additional charge of 2½ cents per barrel,"—a clear instance of loading which occurs only as a continuation of a prior taxable movement.

Gulf Refining Company of Louisiana, I. C. C. No. 3, issued November 14, 1934, effective December 14, 1934, and Gulf Refining Company Supplement No. 1 thereto. This is a joint tariff (R. 126B) quoting rates from stations in Louisiana and Arkansas to Port Arthur, Texas. The rates quoted are "for the transportation of crude petroleum by pipe lines" and it is only in connection with such transportation that "all deliveries to customers' vessels or to tank cars will be subject to a further charge of 2½ cents per barrel."

Humble Pipe Line Company, I. C. C. No. 22, issued November 21, 1928, effective December 27, 1928. This tariff (R. 128B) relates to local terminal charges "applying on interstate and intrastate traffic" (clearly this is taxable transportation) at Harbor Island, Texas. The tariff states that in connection with such transportation the carrier will assess a terminal charge of 2½ cents per barrel on petroleum and its products handled through the terminal facilities of the carrier and loaded aboard vessels at Harbor Island.

Humble Pipe Line Company, I. C. C. No. 180, issued September 14, 1936, effective October 18, 1936. This tariff (R. 128C) quotes rates for "the transportation of crude petroleum by pipe lines" from points in Texas to Anchorage, Louisiana. The tariff states that "all oil required to be loaded aboard ship at North Baton Rouge, Louisiana

will be subject to an additional charge of two and one-half cents (2½¢) per barrel."

Magnolia Pipe Line Company, I. C. C. No. A-26, issued September 20, 1932, effective October 20, 1932; I. C. C. No. A-54, issued February 10, 1936, effective March 12, 1936; I. C. C. No. A-56, issued March 18, 1936, effective April 18, 1936; and I. C. C. No. A-40, issued December 1, 1934, effective January 1, 1935. These are tariffs (R. 134A-150A) relating to the "transportation" of crude petroleum from points in Oklahoma, Arkansas, Louisiana, and Texas to points in Texas and Arkansas, and from King's Mill, Texas to Beaumont and Magpetco, Texas. Each of the tariffs states that the carrier has no facilities for loading oil into consignees' vessels at Beaumont and Magpetco; that the quoted rates do not include that service; and that owners of oil will be required to make their own arrangements for such loading.

In addition, the testimony of qualified witnesses, in the record, shows that no pipe line carrier ever performed the function of loading within the confines of a refinery, such as the operation of the petitioner at Beaumont (R. 63, 86).

Error of Fact No. 2.

In its Special Finding 12, the court below erroneously found the following as a fact:

> "Pipe line companies operating in the neighborhood of plaintiff's Cameron Meadows lease made a charge for loading of 2½ cents per barrel" (R. 32).

There is no evidence whatever in the record which will support the foregoing finding; it appears to be founded on the following statement, unsupported by the record, which appeared in the defendant's brief:

> "It is conceded that the question before this Court in respect of the Cameron Meadows operations is a

> close one. It is a fact, however, that similar services are provided in the oil-producing swampy lands of Louisiana by public carrier pipe-line companies and a rate of 2½¢ per barrel is listed as the tariff therefor."

There are listed and described immediately below the only tariffs in the record quoting rates to or from Louisiana points. The loading charges quoted are not for services "similar" to the producing operations of the petitioner at Cameron Meadows; they are for loading in connection with through movements of oil. Moreover, the only loading charge quoted for loading at a point in Louisiana relates to loading at North Baton Rouge, which is not "in the neighborhood of plaintiff's Cameron Meadows Lease," being many miles distant therefrom.

The tariffs referred to are:

Gulf Refining Company of Louisiana, I. C. C. No. 3, which quotes rates for "the transportation of crude petroleum by pipe lines" from "points established by the Gulf Refining Company of Louisiana for the reception of crude petroleum into its trunk lines" to Port Arthur, Texas (R. 126B).

Humble Pipe Line Company, I. C. C. No. 180, which names rates for "the transportation of crude petroleum by pipe lines" from named points in Texas to Anchorage, Louisiana (R. 128C).

Magnolia Pipe Line Company, I. C. C. Nos. A-26 and A-54 which quote rates for "the interstate transportation by carrier's trunk pipe lines of crude petroleum" from points in Louisiana to Beaumont and Magpetco, Texas (R. 134A, 138A).

Humble Pipe Line Company's I. C. C. No. 180, mentioned above, is the only tariff which quotes a rate for loading into vessels at a point (North Baton Rouge) in Louisiana. The loading charge of 2½ cents per barrel there

quoted is for the performance of such a service only as a continuation or part of a prior taxable service. In addition, North Baton Rouge is many miles distant from Cameron Parish, Louisiana, where petitioner's lease is located (R. 24).

Error of Fact No. 3.

In its Special Finding 12, the court below erroneously found the following as a fact:

> "This service [loading oil into vessels] was rendered by plaintiff, when required of it, for which it made a charge of 1½ cents per barrel" (R. 31).

The inference to be drawn from the foregoing is that Magnolia Petroleum Company performed loading services for others at the terminals of Magnolia Pipe Line Company at Beaumont and at Magpetco. There is nothing in the record which supports any such finding. The facts are that at no time did Magnolia Petroleum Company ever load any refined products or any crude oil for others at Beaumont (R. 117). At Magpetco, petitioner at times did render terminal service in connection with through movements of oil. However, no stoppage was involved (R. 113-114), and only a small amount of oil was handled for others in this manner (R. 117). Such loadings, being in connection with through movements, were tax paid since they were not local or incidental to the refining of oil, as was the case at Beaumont. Cf. Reg. 42, Art. 26.

Error of Fact No. 4.

Although petitioner filed a request therefor (R. 35), the court below erroneously omitted to adopt the findings of its Commissioner (Mr. Ramseyer) to the following effect:

> "22. The plaintiff in its petition takes the position that in the event the court should hold that the opera-

tions of transferring oil from tanks to vessels and barges were taxable as constituting 'transportation of crude petroleum and liquid products thereof by pipe line,' then the charges which the Commissioner of Internal Revenue applied in levying the taxes were not fair.

"23. On moving refined products and crude oil from tanks to vessels at the Beaumont refinery the Commissioner applied a charge of 1½ cents per barrel. On moving refined products from the Beaumont refinery by the 8-inch pipe line to the Magpetco terminal and loading into vessels at that point he applied 2½ cents per barrel. On moving crude oil at the Magpetco terminal from tanks into vessels he applied 1½ cents per barrel. On moving crude oil from tanks into barges at Cameron Meadows lease he applied 2½ cents per barrel.

"24. During the periods involved the plaintiff had a gross investment of approximately $556,440.93 in the wharf loading facilities at its Beaumont refinery. During the same period at the Magpetco terminal plaintiff had a gross investment of approximately $357,314.43 in its wharf loading facilities and pipe line from Beaumont.

"25. Based on its 1935 operations, rates of $.005, $.006, and $.007 per barrel at Beaumont would have yielded net returns of 10%, 15%, and 20%, on the investment, as shown by plaintiff's exhibit 9. Based on the same year's operations, rates of $.016, $.019, and $.021, per barrel at Magpetco would have yielded net returns of 10%, 15%, and 20%, on the investment, as shown by plaintiff's exhibit 10. A charge that would yield 10% return on the investment would be fair. Yields at Beaumont and at Magpetco for all other years involved would have been substantially the same.

"26. At the Cameron Meadows lease the investment in all loading facilities was not in excess of $2,500. For the entire period of 3¾ years, 1,809,000 barrels of

crude oil were loaded into barges at Cameron Meadows. Applying the Commissioner's rate of 2½ cents per barrel gives an annual return of $12,053.00 on an investment of $2,500, or an annual return on the investment of 482%."

The foregoing findings relate to the petitioner's alternative position to the effect that the rates as fixed by the Commissioner of Internal Revenue and used by him as a basis for the tax assessed were not reasonable rates and were not fair charges for the services. It was expressly stated to the court below that the inclusion of such findings was necessary in connection with the presentation by petitioner of its alternative position to this Court on certiorari.

Error of Fact No. 5.

In its Special Finding 4 (R. 29), the court below erroneously omitted to find that in his letter dated May 6, 1940, the Commissioner ruled that the loading of refined products at the Beaumont refinery was not taxable and that petitioner was entitled to a refund of tax in the amount of $78,883.50 (R. 22-23, 43). The said finding was considered necessary by petitioner as showing that its position herein is in strict accordance with the terms of Art. 26 of Reg. 42 which, as regards the taxable periods here involved, has never been amended and is still in force and effect.

Error of Fact No. 6.

In its Special Finding 6 (R. 30), the court below erroneously omitted to adopt as its finding the following fact as set forth in the findings of its Commissioner, Mr. Ramseyer:

> "Its [the Beaumont refinery of petitioner] capacity was 105,000 barrels of crude oil per 24 hours, that is, running at capacity it would consume during 24 hours 105,000 barrels of crude oil in the refining operations."

The foregoing supports the petitioner's position that the distance from the wharf, of some of the storage tanks from which loading occurred at the Beaumont refinery was not great in view of the size of the refinery, and that such loading was local and also incidental to the business of refining as contemplated by Art. 26 of Reg. 42.

ERROR OF FACT NO. 7.

In its Special Finding 7 (R. 30), the court below erroneously omitted to adopt as its finding the following fact as set forth in the findings of Commissioner Ramseyer:

> At the group of tanks mentioned "there might be still another operation, such as blending, before the product was pumped aboard the vessel."

The foregoing fact supports the petitioner's position that the loading operations in question were incidental to the business of refining as contemplated by Art. 26 of Reg. 42.

ERROR OF FACT NO. 8.

In its Special Finding 9 (R. 30), the court below erroneously omitted to adopt as its finding the following facts as set forth in the findings of Commissioner Ramseyer:

> "The tanks from which oil was taken to be loaded on the vessels were also used for other operations, that is, the same tanks were used for refining operations and loading operations. The majority of the tanks had a capacity of 55,000 barrels each."

The foregoing facts support the petitioner's position that the loading operations in question were incidental to the business of refining as contemplated by Art. 26 of Reg. 42.

ERROR OF FACT NO. 9.

The court below erroneously omitted to include in its findings the following facts as set forth in the findings of Commissioner Ramseyer:

> "The discharge lines were from 12 to 20 inches in diameter, and loaded oil into vessels at a rate of from 7,500 to 20,000 barrels per hour. During the period involved the capacities of pipe line carriers were from 20,000 to 40,000 barrels per 24-hour day. The pipeline pumps and the pumps used at Beaumont were different in types, sizes, and pressures."

The foregoing facts support the petitioner's position that the facilities which it used in loading operations did not constitute a "pipe line" as that term is understood in the industry and as used in the taxing act.

ERROR OF FACT NO. 10.

The court below erroneously omitted to include in its finding the following facts as set forth in the findings of Commissioner Ramseyer:

> "There was no pipe line carrier which performed the function of loading oil on ships within the plaintiff's premises. All the employees, the pumping equipment, and other equipment, used in loading were also used in refining processes on the refinery grounds. In the refinery grounds there was a tangled network of underground lines of pipes running in every direction connecting tanks with each other, tanks with stills, tanks and stills with pump house, pump house with loading racks, etc. The discharge lines running from the pump house to the loading racks on the wharf were used exclusively for loading purposes."

Not only do the foregoing facts show that the operations involved were not "substantially similar to movements

which pipeline carriers usually undertake and perform" (Reg. 42, Art. 26), but they also show that the operations were "merely local or incidental to * * * the refining of oil."

(2) Errors of Law.

The following is a specification of the errors of law relied upon.

1. The court below erroneously found, as a matter of law, that the petitioner was not entitled to recover the taxes paid on loadings of refined products at Beaumont and erroneously held that the same constituted taxable transportation of oil by pipe line. In so doing it misinterpreted and misapplied the provisions of Art. 26 of Treas. Reg. 42.

2. The court below erroneously found, as a matter of law, that the petitioner was not entitled to recover the taxes paid on loadings of oil at Cameron Meadows and erroneously held that the same constituted taxable transportation of oil by pipe line. In so doing it misinterpreted and misapplied the provisions of Art. 26 of Treas. Reg. 42.

3. The court below erroneously found, as a matter of law, that the Commissioner, under Sec. 731(b) of the Revenue Act of 1932, was not authorized in this case to determine what would be a reasonable charge upon which to assess the tax.

4. The court below erroneously decided, as a matter of law, that the petitioner was not entitled to recover.

ARGUMENT ON ERRORS OF LAW NOS. 1, 2, AND 4, BEAUMONT AND CAMERON MEADOWS.

These errors relate to the holding that the petitioner was not, as a matter of law, entitled to recover the taxes imposed upon it in respect of the loading of refined products at the Beaumont refinery and the loading of crude oil on its producing lease at Cameron Meadows.

As regards the Beaumont and the Cameron Meadows items, the Court erred primarily in not correctly interpreting and applying the provisions of Art. 26 of Treas. Reg. 42. As to the taxable periods here involved, the cited regulation has never been amended and is still in effect.

The first portion of Art. 26 which is immediately relevant reads as follows:

> "It [transportation * * * by pipe line] also includes the transportation by private owner whenever the movement is substantially similar to movements which pipe-line carriers usually undertake and perform, *if the movement is not merely local or incidental to another business or a related business engaged in by the person so transporting, such as the producing or refining of oil*" (emphasis supplied).

The opinion of the court interprets the language above quoted from the regulations, as follows:

> "Although this regulation seeks to exempt from the tax a transportation which is incidental to a business engaged in by the owner of the oil, it is seen that the basic test established by it is whether or not the transportation service upon which the tax is levied is customarily performed by a pipe-line carrier" (R. 34-35).

To the contrary, as will be seen from an examination of the language of the regulation, there are two tests prescribed therein. First, if the movement is to be taxed, it must be "substantially similar to movements which pipeline carriers usually undertake and perform." Second, not all such movements are taxable, but only those which are "not merely local or incidental to another business * * * such as the producing or refining of oil." The test is not simply whether the movement is "substantially similar" but whether, even if substantially similar, it is a movement that is not merely "local or incidental" to the production or refining of oil.

It is to be noted that as regards the loading of refined products at Beaumont, the Commissioner ruled in his letter of May 6, 1940 (R. 22) that the movement was not only (1) local and incidental but also (2) that it was not substantially similar to a pipe line movement. In that letter the Commissioner stated:

> "Since the tanks are contiguous to and in the immediate vicinity of the wharf ["local or incidental"] and since no substantial pipe line movement is involved, it is held that the tax is not applicable * * *" (R. 22).

As to the loading charges, the court ignored the fact, brought to its attention by petitioner, that Art. 26 contains the following express provision.

> "Delivery service such as loading into tank cars or tank vessels by means of loading racks is subject to tax *when rendered as a continuation or part of a prior taxable service*" (emphasis supplied).

In spite of the clear applicability of the above provision to the issues of this case, this court ignored it. Substantial portions of the regulation are set out in the opinion (R. 34), but the Court did not quote the provision applicable to loading nor discuss it.

The Commissioner of Internal Revenue carefully investigated the fact situation here involved and had representatives on the ground. He followed his own regulations and, as stated, did not assess the tax originally on the loading of refined products at Beaumont (Letter of May 6, 1940, R. 22).

There can be no question in this case but that the loading at Beaumont of refined products was not rendered as a continuation or part of a prior taxable service. The crude petroleum that was delivered to Beaumont and there proc-

essed had come to the end of its journey. The refined products of crude were loaded, not crude.

The Commissioner, in issuing the regulation, was simply taking cognizance of the facts. He must have known, as the record conclusively shows, that pipe line carriers perform the service of loading only at the end of their trunk line systems, for their own customers and only with reference to oil brought to their own terminals (R. 86).

Men long in the service of the oil industry testified that they knew of no case where a pipe line carrier performed a loading function within the confines of a refinery (R. 62-63, 75, 86). These facts make it clearly impossible for petitioner to have acquired any advantage by virtue of owning its own loading facilities over other refineries not so situated. The facts seem to indicate that all refineries are similarly situated with reference to such facilities. The government presented no evidence whatever that would indicate any such advantage, and in all of the tariffs (R. 120-150A) introduced by the government, charges for loading were made for services to be performed at the end of the carriers' respective trunk line systems and at their respective terminals.

This point was not considered in *McKeever* v. *Fontenot*, 104 F. (2d) 326 (C. C. A., 5th, 1939), cert. den., 308 U. S. 588 (1939), and that case ought not to be controlling here. This case should be decided on its own facts. A decision in another case should be ignored when it fails to take into consideration the very provisions of the regulations which are applicable to the question at issue. Regulations laid down for the guidance of taxpayers should not be ignored in the determination of their taxes.

We therefore respectfully urge that the court below was in error in holding that the loading of refined products at Beaumont constituted taxable transportation of oil by pipe line.

CAMERON MEADOWS, ADDITIONAL CONSIDERATIONS.

The court below held that "the transportation at the Cameron Meadows lease was also from storage tanks to vessels." (R. 35).

The Commissioner's letter of May 6, 1940 (R. 22-24), sets out that the rate covers *gathering* as well as *loading* and the tax was so assessed.

Oil as it came from the wells was placed in settling tanks where it was treated. From the settling tanks it was moved by lines of pipe to stock tanks. From the stock tanks, it was transferred to barges, through pipe and rubber hose, at a distance of 150 to 400 feet (R. 51-52).

We submit that no distinction exists between the facts in this case and those in the case of *Big Lake Oil Company* v. *Driscoll,* 40 F. Supp. 510 (Dist. Ct., W. D. Pa., 1941) cited by us to the court below. In the Big Lake case, the movements were from the wells to a treating plant (similar to settling tanks in this case) and from the treating plant to storage tanks. The court in that case states on page 511:

> "Until July, 1934, the treated oil was stored in tanks constructed by plaintiff some distance from the treating plant but upon its own property. After that date it was stored in tanks in the immediate vicinity of the treating plant. Delivery to the purchasing company was made from the storage tanks."

The court further stated with reference to transfer from the treating plant to the storage tanks:

> "This was a mere storage comparable to the transfer of oil from the mouth of the well to the flow tanks. *Pipe line service began upon delivery to the purchasing company for transportation to market"* (Emphasis supplied).

Judgment was entered in favor of the plaintiff, the court thus holding that neither the transfer from an oil well to the

treating plant nor the transfer from the treating plant to storage tanks was taxable.

In the case of *Jones* v. *Continental Oil Co., supra*, the court approved the finding of the trial court that the movement of oil from the wells to the treating plant and from the treating equipment into storage tanks when considered as one continuous movement was in reality a part of the production process and not taxable.

It, therefore, follows that the court below was in error in assessing any tax here for "gathering."

Nor should any tax have been assessed for "loading." This has been discussed in detail under the preceding point. The loading at Cameron Meadows consisted of the running of oil by gravity through 150 to 400 feet of pipe and rubber hose to barges all on one producing lease. From the record it is apparent that no pipe line carrier does or would perform a service similar to that performed on the Cameron Meadows lease (R. 87). The record shows that the movement is not substantially similar to movements which pipe line carriers usually undertake and perform. Following as it does the non-taxable movement from treating tanks to storage tanks, it is not a continuation or part of a prior taxable movement.

It follows from what has been said that no charge should be made at all in the case of the Cameron Meadows loadings; that as the charge of 2½ cents was made both for gathering and loading, the charge cannot stand on the basis of either gathering or loading.

The court below has upheld a charge of 2½ cents per barrel for loading only, but this cannot stand as it was not so assessed.

We respectfully urge that the court was in error in denying petitioner recovery for the taxes assessed against it on the Cameron Meadows operations.

Argument on Errors of Law Nos. 3 and 4.

"Fair Charge."

Petitioner contends that the charges upon which the taxes were assessed were not fair charges and that under the law these charges could not exceed those which would produce a fair return on investment.

The court below held that the argument is of no avail—

> "because the tax was assessed on the charge established by bona fide tariffs. It is only in the absence of tariffs that the Commissioner is authorized to determine what would be a reasonable charge (Sec. 731 (b)). See *National Pipe Line Co.* v. *United States,* 99 C. Cls. 180, 190, et seq." (R. 35).

The "fair charge" mentioned in Sec. 731(a) (2) of the Act is computed in the following manner:

> "(b) For the purposes of this section, the fair charge for transportation shall be computed—
>
> "(1) from actual bona fide rates or tariffs, or
>
> "(2) if no such rates or tariffs exist, then, on the basis of the actual bona fide rates or tariffs of other pipe lines for like services, as determined by the Commissioner, or
>
> "(3) if no such rates or tariffs exist, then on the basis of a reasonable charge for such transportation, as determined by the Commissioner." Section 731 (b). See also Reg. 42, Art. 28.

Since the petitioner does not operate a pipe line it did not, of course, publish tariffs applicable to the movements in question. Therefore, no "actual bona rates or tariffs" were in existence.

Likewise, the tariffs of pipe line carriers such as those introduced in this case are not applicable, for the reason that the evidence in this case conclusively shows that these tariffs are not for like services. The court erred in failing to find that the loadings involved in this case were not like the services covered by the tariffs introduced in the case. Petitioner introduced evidence showing the dissimilarity, and the government introduced no proof on this point whatever (R. 111-112).

The law, in providing that like tariffs can only be applied to *like services,* recognizes the fact that all loading services are not alike and that a charge is not fair unless the services rendered are similar.

At Cameron Meadows the oil is loaded by gravity into small barges from storage tanks 150 to 400 feet away (R. 52). Compare this to the loading by the large pipe line companies at their terminals where there are large tank farms with necessary loading from greater distances, and the additional service rendered by pipe line companies at their terminals, including the receiving, holding and loading, and all expenses connected therewith, including loss from evaporation (R. 112).

As pointed out in our Motion for a New Trial filed with with the court below (R. 36), counsel for the government in his brief made the following statement with reference to Cameron Meadows:

> "It is a fact, however, that similar services are provided in the oil-producing swampy lands of Louisiana by public carrier pipe line companies and a rate of 2½ cents per barrel is listed as the tariff therefor."

There is no evidence at all in the record to substantiate such a statement. All of the evidence introduced in this

case by the government consisted solely of some tariffs (R. 120-152). No evidence was introduced indicating that the terminals of these carriers were in oil-producing swampy lands of Louisiana.

Further, there was no evidence introduced showing that the services rendered by any pipe line carrier were like services to those performed by Magnolia for itself at Beaumont. All of the evidence is to the contrary.

In the absence of rates or tariffs that are in existence covering like services, the charges are to be fixed on the basis of a reasonable charge in accordance with Sec. 731(b)(3) and the regulations cited hereinbefore.

The regulations provide for the submission of data covering investment, etc. Petitioner fully complied by furnishing such data to the Commissioner. Likewise, petitioner fully developed in this record the amount of investment, expense, rate of return on investment and similar data affecting the loadings at the Beaumont refinery and at Cameron Meadows (R. 93, *et seq.*)

Commissioner Ramseyer heard this evidence and filed his findings thereon.

His conclusion was:

> "A charge that would yield 10% return on the investment would be fair."

We respectfully submit that the court below was in error in refusing to consider the evidence in the case and in holding that, as a matter of law, the Commissioner of Internal Revenue was not authorized to determine what would be a reasonable charge upon which to assess the tax.

V. Conclusion.

For the foregoing reasons, it is submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

RAYMOND M. MYERS,
Magnolia Building,
Dallas 1, Texas;
HOMER HENDRICKS,
920 Southern Building,
Washington 5, D. C.,
Attorneys for Magnolia Petroleum Company, Petitioner.

INDEX

CITATIONS

605340—44

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 209

MAGNOLIA PETROLEUM COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court below (R. 32–35) is reported in 53 F. Supp. 231.

JURISDICTION

The judgment of the Court of Claims was entered January 3, 1944 (R. 35). On March 2, 1944, the petitioner filed a motion for a new trial which was overruled on April 3, 1944 (R. 36). The petition for a writ of certiorari was filed June 30, 1944. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTION PRESENTED

Whether the transportation of liquid products of crude petroleum and also of the crude petroleum through petitioner's pipe lines from its storage tanks to vessels at its wharves is a taxable movement under the provisions of Section 731 of the Revenue Act of 1932.

STATUTE AND REGULATIONS INVOLVED

The pertinent statute and regulations are set forth in the Appendix, *infra*, pp. 10–13.

STATEMENT

The special findings of fact of the Court of Claims (R. 28–32) may be summarized as follows:

During the period involved in this action petitioner was a Texas corporation engaged in the business of producing, refining, and marketing petroleum and petroleum products. It had refineries at Beaumont, Corsicana, Fort Worth, and Luling, Texas. Under its charter, petitioner could operate no pipe line, and it was not a common carrier, but it wholly owned the Magnolia Pipe Line Company which was a common carrier pipe-line transportation company and which had the same officers and management as petitioner (R. 28).

The Commissioner of Internal Revenue asserted against the petitioner for the period here involved pipe-line transportation taxes in the amount of $74,883.50 and $10,793.10 on account of the conveyance by the petitioner of refined petroleum

products and crude oil, respectively, into vessels located at petitioner's wharf at Beaumont, Texas. The Commissioner also asserted pipe-line transportation taxes against the petitioner in the amount of $2,030.63 by reason of the conveyance by petitioner of crude oil into barges at its Cameron Meadows lease (R. 28–29).

The above-mentioned taxes were duly assessed and paid[1] and a timely claim for refund filed. This claim for refund was rejected on March 20, 1941, and this suit was begun in the court below on May 5, 1942 (R. 1, 29).

Petitioner had a refinery and storage sites at Beaumont occupying approximately 750 acres abutting the Neches River, a navigable stream flowing into the Gulf of Mexico. This was a complete refinery at which all the principal petroleum products were manufactured. The Neches River is on the north boundary of the plant and there was a wharf there about 1,500 feet long with berth space for three vessels. The tanks from which the crude petroleum and refined products were loaded into vessels at the wharf at Beaumont were about 50 in number. They were arranged in rows from 400 to 2,400

[1] The petitioner also paid pipe-line transportation taxes on the conveyance of refined products from the Beaumont refinery to vessels located at petitioner's Magpetco terminal, nine miles from Beaumont, and also on the conveyance of crude oil into vessels at the Magpetco terminal (R. 28–29). Petitioner is raising no point here as to the taxes on these operations.

feet from the wharf. After the various steps in the production of the oil and its refining, the finished product was delivered to this group of tanks.

The tanks were connected with lines of pipes to a pump house. From the pump house to the wharf there were about a dozen discharge lines, a line for each type of product handled. Each discharge line was connected to a loading rack located on the wharf. From each loading rack there was a rubber hose from 38 to 40 feet long to carry the oil from the rack into the vessel (R. 30, 31).

The Cameron Meadows lease was located in southern Louisiana in swampy country and was reached by means of canals. The canals were used for the movement by barge of oil produced from the wells. The oil as it came from the wells was placed into settling tanks where it was treated. From the settling tanks the oil was moved by a line of pipes to stock tanks and from the stock tanks it was transferred to barges through pipes and rubber hose (R. 31).

The court below held that the petitioner was subject to the tax on the transportation of oil as asserted by the Commissioner and rendered judgment in favor of the United States.

ARGUMENT

1. The primary question in this case is whether the movement of oil from storage tanks through

pipe-lines into vessels on waters adjoining the premises on which the tanks are located is a "transportation * * * by pipe-line" within the meaning of Section 731 of the Revenue Act of 1932. Inasmuch as petitioner is no longer raising any question as to the taxability of the movement of crude oil into vessels at Beaumont, the issue is limited to the taxability of the movement of the refined products at the Beaumont refinery and the crude oil at Cameron Meadows.

In *McKeever* v. *Fontenot*, 104 F. (2d) 326, which also involved the movement of oil from storage tanks to wharves or vessels, the Circuit Court of Appeals for the Fifth Circuit held such a movement taxable, and this Court denied certiorari (308 U. S. 588). Each of the contentions urged by petitioner here was made in the petition for certiorari in that case (pp. 15–19). If the point was not worthy of review then, it is less so now when an additional lower court has come to the same conclusion.

The movement of oil from the tanks to the wharves or vessels is clearly "transportation" in a literal sense, so that there is no difficulty in bringing the movement in question here within the language of the statute. Petitioner's reliance is upon the Treasury Regulation (Reg. 42, Art, 26) which holds transportation by a private owner taxable under the Act (1) when "the movement is substantially similar to movements which pipe-

line carriers usually undertake and perform", (2) when "the movement is not merely local or incidental to another business or a related business engaged in by the person so transporting, such as the producing or refining of oil", and (3) when "delivery service such as loading into tank cars or tank vessels by means of loading racks is * * * rendered as a continuation or part of a prior taxable service."

The Court of Claims found that pipe-line companies consistently charged fees for moving oil from tanks to vessels, and that accordingly petitioner's service was similar to that usually undertaken by pipe-line companies. The same conclusion of fact had been reached in the *McKeever* case. The fact that the pipe-line companies may render such services at the end of a through movement, and not merely within the confines of a single refinery, does not make the service from tank to vessel dissimilar. In addition, the transportation from tank to vessel was not incidental to the refining or production of oil. At Beaumont "the movements taxed were not incidental to the refining of oil but were movements which took place after all refining processes had been completed and were movements towards market."[2] At Cameron Meadows the movement was not incidental to the production of the

[2] The quotation is from the findings of the district court in the *McKeever* case, set forth at page 127 of the transcript of record in this Court, October Term 1939, No. 304.

crude oil, but occurred after the oil had been drilled and stored, and was ready to be marketed as crude. Nor is petitioner exempt from tax on the ground that "delivery service such as loading * * * by means of loading racks" is not taxable unless "rendered as a continuation or part of a prior taxable service." For here the movement from the tanks to the racks constituted a prior taxable transportation.

The decision of the court below is not, as petitioner alleges, in conflict with the recent decision of the Circuit Court of Appeals for the Tenth Circuit in *Jones* v. *Continental Oil Co.*, 141 F. 2d 923. In that case the movement of oil was from the well mouth through the treating and stabilization equipment into storage tanks where it was measured for royalty purposes and delivered to the pipe-line department. The District Court found as a fact that such movement was not similar to that which a pipe-line carrier would ordinarily or usually undertake and perform, and that such movement was part of the production process. The Circuit Court of Appeals in affirming this decision approved the test set forth in the Commissioner's Regulations (Regulations 42, Appendix, *infra*) that transportation within the meaning of the Act includes transportation by a private owner whenever the movement is substantially similar to movements which pipe-line carriers usually undertake and perform. That court further recognized (p. 926) that the "question when production ceases and transportation

commences is one which necessarily lies within the peculiar province of the trier of the facts, having regard for the practicalities of the problems involved."

2. The alternative question raised by petitioner (Pet. 6)—whether the Commissioner fixed reasonable rates as the basis for computing the tax—is in fact not an issue in this case. Section 731 of the Revenue Act of 1932 provides that the determination of a "fair charge" for pipe-line transportation of liquid petroleum products shall be made first, from *bona fide* rates or tariffs of the transporter, or if no such rates or tariffs exist, then on the basis of *bona fide* rates or tariffs of other pipe-line companies for "like" services. It is only in cases where no such rates or tariffs exist that Section 731 (b) (3) provides for a determination of a "reasonable charge" for the transportation by the Commissioner. The court below found as a fact on substantial evidence that common carrier pipe-line companies operating in the immediate vicinity of petitioner's lines published *bona fide* rates or tariffs for services equivalent to those rendered by petitioner for itself. It therefore properly held that the Commissioner was not authorized to determine what would be a "reasonable charge" (R. 35). Cf. also *National Pipe Line Co.* v. *United States,* 48 F. Supp. 655, 659, *et seq.* (C. Cls.).

3. This case involves taxes for the years 1933 through 1936 and for a portion of the year 1937. Section 616 of the Revenue Act of 1942 (56 Stat. 798) effective November 1, 1942, amends Section 3460 of the Internal Revenue Code (26 U. S. C. 1940 ed., Supp. III, Sec. 3460) (that section being the successor to Section 731 of the 1932 Act) to exempt from the tax "any movement through lines of pipe within the premises of a refinery * * * if such movement is not a continuation of a taxable transportation."

CONCLUSION

The decision below is correct. There is no conflict of authority. The petition should be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

SAMUEL O. CLARK, JR.,
Assistant Attorney General.

SEWALL KEY,
ROBERT N. ANDERSON,
ELIZABETH B. DAVIS,
ROBERT L. STERN,
Special Assistants to the Attorney General.

AUGUST 1944.

APPENDIX

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 731. TAX ON TRANSPORTATION OF OIL BY PIPE LINE.[3]

(a) There is hereby imposed upon all transportation of crude petroleum and liquid products thereof by pipe line originating on or after the fifteenth day after the date of the enactment of this Act and before July 1, 1934—

(1) A tax equivalent to 4 per centum of the amount paid on or after the fifteenth day after the date of the enactment of this Act for such transportation, to be paid by the person furnishing such transportation.

(2) In case no charge for transportation is made, either by reason of ownership of the commodity transported or for any other reason, a tax equivalent to 4 per centum of the fair charge for such transportation, to be paid by the person furnishing such transportation.

(3) If (other than in the case of an arm's length transaction) the payment for transportation is less than the fair charge therefor, a tax equivalent to 4 per centum of such fair charge, to be paid by the person furnishing such transportation.

(b) For the purposes of this section, the fair charge for transportation shall be computed—

[3] The above section has been extended in later Acts without any change in wording: Act of June 16, 1933, c. 90, § 212, 48 Stat. 206; Pub. Res. No. 36 of June 28, 1935, c. 333, 49 Stat. 431; Pub. Res. No. 48 of June 29, 1937, 50 Stat. 358.

(1) from actual bona fide rates or tariffs, or

(2) if no such rates or tariffs exist, then on the basis of the actual bona fide rates or tariffs of other pipe lines for like services, as determined by the Commissioner, or

(3) if no such rates or tariffs exist, then on the basis of a reasonable charge for such transportation, as determined by the Commissioner.

(c) Every person liable for the tax imposed under subsection (a) shall make monthly returns under oath in duplicate and pay such taxes to the collector * * *.

Treasury Regulations 42, promulgated under the Revenue Act of 1932:

ART. 26. *Basis of tax.*—The term "all transportation of crude petroleum and liquid products thereof by pipe line" includes any such transportation by a carrier, either public or private, whether or not transported for hire, and whether or not the commodity transported is owned by the carrier. It also includes the transportation by private owner whenever the movement is substantially similar to movements which pipe-line carriers usually undertake and perform, if the movement is not merely local or incidental to another business or a related business engaged in by the person so transporting, such as the producing or refining of oil. Thus, where a refiner maintains a trunk line or a gathering line from a refinery to an oil field or pool, the services which the refiner performs for himself are similar to those which pipe-line carriers would otherwise render. The refiner, therefore, should pay the tax as though he had in fact employed the services of a carrier.

If, on the other hand, the movement is from storage tanks to stills which are a part of the same manufacturing unit, or from wells to flow tanks or storage tanks situated in the immediate vicinity, the movement is not such as a pipe-line carrier would normally render and consequently is not subject to the tax imposed under section 731. The movement by pipe line from lease storage tanks to storage tanks such as are usually maintained in the immediate vicinity of a refinery, railroad siding, or boat wharf, is taxable.

The gathering service rendered in movements from lease storage tanks to storage tanks or receiving stations at the end of a stem or gathering line is subject to tax.

The transporting service rendered in movements from the end of the stem or gathering lines through a main or trunk line to a point of delivery is subject to tax.

Delivery service such as loading into tank cars or tank vessels by means of loading racks is subject to tax when rendered as a continuation or part of a prior taxable service.

ART. 27. *Rate and computation of tax.*— Where a "fair charge" for the transportation is collected, the tax attaches at the rate of 4 per cent of such charge. In case no charge for the transportation is made by reason of the ownership of the commodity transported or otherwise, or if in a transaction not at arm's length a charge less than a fair charge is made for the services rendered, the tax will attach at the rate of 4 per cent of a fair charge for such services, as determined by the Commissioner. (See art. 28.)

* * * * *

ART. 28. *Fair charge.*—If a pipe line carrier having published tariffs and engaged in the bona fide transportation of crude petroleum and liquid products thereof for hire makes no charge or (in the case of a transaction not at arm's length) less than a fair charge for moving such commodities accepted by it for transportation, the tax is to be computed upon a fair charge which would be paid under the carrier's tariffs for performing such service for hire.

Where no tariffs have been published, the fair charge will be determined on the basis of the ordinary or customary charge for like or similar services performed in the same field or area. If no reasonable basis of comparison can be found, a full statement of the facts surrounding the particular movement must be submitted to the Commissioner for his guidance and assistance in determining a fair charge. Such a statement should contain figures showing the original investment in the pipe-line system, additions and betterments, depreciation, obsolescence, sinking funds and reserves, present worth, operating expenses during the taxable period, fair income return, and other information which may be of value, including an estimate as to the probable life of the field and of the pipe line.

From information available the Commissioner will determine what constitutes a fair charge for the purpose of this tax in respect of the particular movement under consideration.

U. S. GOVERNMENT PRINTING OFFICE: 1944